D.T.E. 98-13D

Investigation pursuant to the Electric Restructuring Act, St. 1997, c. 164, §§ 239, 240 (G.L.

c. 164, §§ 94G, 94G½) by the Department of Telecommunications and Energy, to consider whether granting exemptions from some or all of the requirements of G.L. c. 164, §§ 94G and 94G½ (including fuel charges, performance reviews, and goal-settings) for Fitchburg Gas & Electric Light Company is in the public interest.

APPEARANCES: Paul Dexter, Esquire

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Boston, Massachusetts 02109-1775

FOR: FITCHBURG GAS & ELECTRIC LIGHT COMPANY

Respondent

Thomas F. Reilly, Attorney General

By: John M. Grugan, Assistant Attorney General

Joseph W. Rogers, Assistant Attorney General

Regulated Industries Division

Public Protection Bureau

200 Portland Street

Boston, Massachusetts 02114

Intervenor

I. INTRODUCTION

On January 22, 1998, the Department of Telecommunications and Energy ("Department") opened an investigation pursuant to the Electric Industry Restructuring Act ("Restructuring Act"), St. 1997, c. 164, §§ 239, 240 (G.L. c. 164, §§ 94G, 94G½), to consider whether granting exemptions from some or all of the requirements of G.L. c. 164, §§ 94G and 94G½ (including fuel charges, performance reviews and goal-settings) for Fitchburg Gas & Electric Light Company ("FG&E" or "Company"), Cambridge Electric Light Company, Commonwealth Electric Company, Boston Edison Company, Eastern Edison Company, Massachusetts Electric Company, Nantucket Electric Company, and Western Massachusetts Electric Company (collectively "Companies") is in the public interest. Notice of §§ 94G and 94G½ Exemptions. The matters were docketed as D.T.E. 98-13A through F. This Order pertains solely to FG&E, D.T.E. 98-13D.

Pursuant to the duly issued notice, the Company and the Attorney General filed written comments. A public hearing was held at the Department's offices on February 10, 1998. The Attorney General of the Commonwealth ("Attorney General") intervened as of right pursuant to G.L. c. 12, § 11E. No petitions for leave to intervene were filed in FG&E's proceeding.

On February 20, 1998, the Department issued an Order that, in pertinent part, directed the Companies to file by May 1, 1998, for Department approval, a plan for reconciling any over- or under-recovery in their respective fuel charge accounts and a proposal for exemptions from some or all of the requirements of G.L. c. 164, §§ 94G and 94G1/2 ("February 20, 1998 Order").[(1)] The Company filed its plan for reconciliation and exemptions on May 1, 1998 ("May 1, 1998 Plan").[(2)]

An evidentiary hearing was held at the offices of the Department, on May 13, 1999[(3)] regarding the Company's May 1, 1998 Plan. In support of the May 1, 1998 Plan, the Company sponsored the testimony of two witnesses: Karen Asbury, manager of regulatory services at Unitil Service Company; and Scott Long, senior energy analyst, FG&E. The evidentiary record consists of two exhibits, one response to a record request, and the testimony of Ms. Asbury and Mr. Long. The Attorney General filed a brief at the conclusion of the hearings in each of the separate cases. The Company also filed a brief in this proceeding.

II. POSITIONS OF THE PARTIES

1. FG&E

According to FG&E's testimony, the Company has a fuel charge over-recovery of $857,378 (Tr. at 6, 8). A large portion of this fuel-charge over-recovery, $628,707, is attributable to the fuel charge over-recovery (id. at 5). The balance, $228,671, is attributed to a refund received from Hydro Quebec in April 1999 regarding a billing dispute, which prior to restructuring would have flowed through the fuel charge account (id. at 6).

In its May 1, 1998 Plan, the Company requests that its fuel charge over-recovery be returned to its ratepayers by crediting that amount to its Standard Offer Service Account ("SOSA"), a fund accumulating the difference between the revenues the Company bills for Standard Offer Service[(4)] and the actual cost of that service (May 1, 1998 Plan at 1).[(5)] The Company argues that its proposed treatment of the fuel charge over-recovery is appropriate because the fuel charge and Standard Offer Service are costs of a similar nature (id. at 2).

In practice, the Company has been crediting its transition-charge account consistent with FG&E's restructuring plan (Tr. at 6). At the May 13 hearing, however, the Company commented that it would agree with a Department's determination that a credit should appear either in its transition-charge account or in its SOSA (id. at 7-8).

Finally, the Company requests that it be exempted from the performance review provisions of G.L. c. 164, §§ 94G and 94G½ (May 1, 1998 Plan at 2). The Company states that its proposed divestiture of its generation assets, make goal-settings and performance reviews unwarranted (id.).

2. Attorney General

The Attorney General proposes that the fuel charge over-recovery be returned to ratepayers through the SOSA (Attorney General Brief at 9). The Attorney General does not take issue with the Department granting exemptions from G.L. c. 164, §§ 94G and 94G½ for

performance reviews (id. at 10). However, the Attorney General asserts that such exemptions should not create future limitations on the Department's authority to investigate the procurement of standard offer and default service power (id. at 11).

The Attorney General raises the issue of NEPOOL reactivation expenses related to a potential power shortage in the summer of 1997 ("reactivation expenses")[(6)] incurred by FG&E during 1997 (id. at 12). At that time, the Department allowed FG&E to recover these expenses through the fuel charge, subject to refund after further investigation (id.). The Attorney General argues that these charges were incurred due to the outages at the Millstone units (id.). Consequently, the Attorney General is questioning the prudence of

these expenses and would like this issue to be resolved in FG&E's performance review proceeding that covers the time period during which these costs were incurred (id. at 13).

In addition, the Attorney General argues that ratepayers should be reimbursed for the replacement power costs incurred by FG&E as a result of the power outages at Millstone III and passed through to its ratepayers (id. at 13). The Attorney General argues that Millstone III was operated imprudently and the ratepayers should not be required to pay for any imprudence (id.). The Attorney General states that the Department, as part of the final performance review, should investigate the prudence of the operation of Millstone III regarding these outages (id.).

Finally, the Attorney General is also concerned that there are several outstanding fuel charge issues that may not have been identified as part of this proceeding (id. at 14). As a result, the Attorney General recommends that the Department order the Company to compile a list, subject to review, of outstanding fuel charge related issues and have the Company file a plan on how it intends to resolve them (id.).

III. ANALYSIS AND FINDINGS

The Company states that it has a fuel charge over-recovery of $857,378 (Tr. at 6, 8). No party in this proceeding disputed the amount of the fuel charge over-recovery. After review of the documentation supporting these figures, the Department finds that $857,378 is the fuel charge over-recovery for the Company. Accordingly, $857,378 shall be returned to ratepayers.

As part of its proposal, the Company seeks to apply the total fuel charge over-recovery to the balance of the SOSA and has noted that there are several benefits to ratepayers resulting from its proposed treatment of the fuel charge over-recovery balance (May 1, 1998 Plan at 2; Tr. at 16-17). General Laws c.164, § 94(b), however, provides for the recovery of prudently incurred reasonable costs of fuel and purchased power by electric companies through an itemized fuel charge. The SOSA is not related to the cost of fuel. In addition, using the fuel charge over-recovery to partially offset the SOSA would not benefit those customers who contributed to the fuel charge over-recovery but have since left Standard Offer Service. The Department finds that the Company's proposal to partially offset the SOSA is inappropriate. Accordingly, the Department rejects the Company's proposed method of returning the fuel charge over-recovery to ratepayers through a credit to the SOSA.

Consistent with the over-recovery provisions and intent of G.L. c. 164, § 94G, the Department directs the Company to return the fuel charge over-recovery to ratepayers in the form of a per kilowatthour ("KWH") credit on bills issued pursuant to meter readings for the billing months of October, November, and December 1999. This credit cannot be a part of any rate reduction[s] that are required by the Restructuring Act and shall appear as a line item on each ratepayer's bill. The Department also directs the Company to file by December 15, 1999, a reconciliation for the purpose of implementing any adjustment

to the credit amount that may be necessary due to a discrepancy between the forecasted KWH and the actual KWH consumed while the credit is in effect.

Pursuant to Boston Edison Company, D.P.U. 85-1C (1985), the Department directs the Company to apply interest to the $628,707 fuel charge over-recovery total using an interest rate equal to the prime rate. D.P.U. 85-1C at 14. Interest shall accrue effective March 1, 1998. Also pursuant to Boston Edison Company, D.P.U. 85-1C (1985), the Department directs the Company to apply interest to the $228,671 Hydro Quebec refund only from the date that amount was received by FG&E.

Regarding exemptions from the requirements of G.L. c. 164, §§ 94G and 94G½ for goal-settings and performance reviews, no party objected to the Department granting the Company such exemptions. Since FG&E has either divested or is in the process of divesting itself of all entitlement interests in generating units, the Department finds that it is in the public interest to grant exemptions from the requirements of G.L. c. 164, §§ 94G and 94G½. These exemptions are effective as of the date that FG&E divests its entitlement interests in each of its generating units. The Department notes that these exemptions do not preclude the Department from future investigations into the procurement of standard offer and default service power.

With respect to the issue of NEPOOL reactivation expenses, the Department allowed FG&E to recover these expenses through the fuel charge, subject to refund after further investigation. The Attorney General questions the prudence of these expenses and suggests that this issue should be resolved in FG&E's performance review proceeding that covers the time period during which these costs were incurred. The Department agrees with the Attorney General's position since the resolution of this issue is beyond the scope of this proceeding and is more appropriately addressed in the performance review proceeding, which includes an evaluation of the prudence of incurring these costs during the appropriate time period.

Regarding the replacement power costs that were incurred as a result of the Millstone III outages, the Department agrees with the Attorney General's position that the issue is more appropriately addressed in the performance review proceeding, which includes an evaluation of the prudence of incurring these costs during the appropriate time period, since the resolution of this issue is beyond the scope of this proceeding.

The Attorney General proposed that the Department order the Companies to file a list of any outstanding fuel charge related issues, including the Hydro Quebec refund, along with a proposal addressing how to resolve these issues. The Department finds that such an undertaking would be unnecessary as this Order effectively resolves all fuel charge related issues for the Company.

IV. ORDER

After due notice, hearing, and consideration, it is

ORDERED: That Fitchburg Gas & Electric Company return its fuel charge over-recovery of $857,378 to ratepayers, in the form of a per KWH credit on bills issued pursuant to meter readings for the billing months of October, November, and December 1999, but unless otherwise ordered by the Department, shall not become effective earlier than seven (7) days after it is filed with supporting data demonstrating that such credit complies with this Order; and it is

FURTHER ORDERED: That the fuel charge credit appear as a line item on each ratepayer's bill and shall not be a part of any rate reduction[s] that are required by the Electric Restructuring Act of 1997; and it is

FURTHER ORDERED: That Fitchburg Gas & Electric Company file by December 15, 1999, a reconciliation for the purpose of implementing any adjustment to the credit amount that may be necessary due to a discrepancy between the forecasted KWH and the actual KWH consumed while the credit is in effect; and it is

FURTHER ORDERED: That Fitchburg Gas & Electric Company apply interest to the $628,707 fuel charge over-recovery total using an interest rate equal to the prime rate and accruing effective March 1, 1998; and it is

FURTHER ORDERED: That Fitchburg Gas & Electric Company apply interest to the $228,671 Hydro Quebec refund using an interest rate equal to the prime rate and accruing from the date that amount was received by FG&E; and it is.

FURTHER ORDERED: That Fitchburg Gas & Electric Company is exempted from the goal-setting and performance review requirements of G.L. c. 164, §§ 94G and 94G½, effective as of the date that the Company divests its entitlement interests in each of its generating units; and it is

FURTHER ORDERED: That Fitchburg Gas & Electric Company comply with any and all other directives contained in this Order.

By Order of the Department,

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Janet Gail Besser, Chair

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

1. The February 20, 1998 Order also (1) exempted the Companies from the fuel charge, (2) authorized the Companies to put into effect an approved fuel charge for bills issued pursuant to meter readings for the billing month of March 1998 for electricity consumed in February 1998, and (3) authorized the Companies' continuance of the Qualifying Facility rate.

2. The Department marks for identification and now admits into evidence the May 1, 1998 Plan.

3. In the interim, the Department clarified the scope of the hearing to be solely exemptions from the requirements of G.L. 164, §§ 94G and 94G½ and not to include a comprehensive audit of the Companies' fuel charges. Interlocutory Order on Appeal of Hearing Officer Ruling, D.T.E. 98-13, at 5-6 (April 16, 1999).

4. Standard Offer Service is the legislatively-mandated provision of electric power to customers at a Department-approved rate, which includes a 10 percent discount for the period March 1, 1998 and a 15 percent discount for the period September 1, 1999 to January 1, 2004, as the electric industry shifts to retail competition.

5. The Company would not object to using the fuel charge over-recovery amount to offset its stranded costs in the transition charge account (Tr. at 9).

6. Due to unscheduled outages at certain generating units around New England, including Maine Yankee, Connecticut Yankee and the Millstone units, NEPOOL projected a potential capacity shortfall during the summer of 1997. As a result, NEPOOL ordered all NEPOOL members, including FG&E, to reactivate or step up production at any generating units that had been either not operating or running below full capacity. The expenses related to this action were spread across all NEPOOL members.